

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
v.)	2:03-cr-229
)	
DANA LAMAUER PENNEY)	

ORDER OF COURT

AND NOW this 18th day of August, 2009 upon consideration of a MOTION TO ALTER OR AMEND A JUDGMENT PURSUANT TO 28 U.S.C. RULE 59(e) (Document No. 59) filed by defendant, Dana Lamaur Penney, *pro se*, and the GOVERNMENT'S RESPONSE TO THE DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO TITLE 28, UNITED STATES CODE, RULE 59(e) (Document No. 65) and it appearing that defendant has filed his motion pursuant to **Federal Rule of Civil Procedure 59(e)**, which is **not** applicable to legal proceedings and/or prosecutions in criminal actions and there is no identical rule of criminal procedure; that is the Federal Rules of Civil Procedure **DO NOT APPLY** to criminal cases.

Furthermore, as previously explained, this Court does not have the authority to reduce the defendant's sentence below the mandatory minimum sentence of 120 months prescribed by statute. *See United States v Maldonado*, 297 Fed. Appx. 106, 2008 WL 4717517 (3rd Cir. October 28, 2008)(unpublished) in which "the Court of Appeals for the Third Circuit held that a district court, in adjusting a sentence pursuant to Section 5G1.3(c) of the guidelines, could not depart below a mandatory minimum sentence." Accordingly, as previously ruled, this Court lacks

jurisdiction to further reduce the defendant's sentence and defendant's motion is therefore,
DENIED.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

cc: Dana Lamaur Penney
Register # 07908-068
FCI Phoenix
Federal Correctional Institution
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